

ST 00-0006-PLR 03/20/2000 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495 (This is a PLR).

March 20, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of January 26, 2000 and your facsimile received on February 10, 2000 containing additional requested information. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the CITY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the CITY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Please deem this correspondence a request for a Private Letter Ruling (PLR) pursuant to 2 Ill. Adm. Code 1200 regarding the matter outlined below. This request is a follow-up to an email response to an email inquiry I submitted last November. The facts of that inquiry and your response are relevant background to this request. A copy is attached as Exhibit A.

The CITY seeks guidance on the appropriate tax treatment of the charges and fees of the services to be provided by the City which the Department of Revenue has concluded would be subject to the Telecommunications Excise Tax Act and the Telecommunications Municipal Infrastructure Maintenance Fee Act. Enclosed are copies of Service Contracts that the city has entered into with three customers which are marked Exhibits B-D. The charges that the City is imposing for the services are described in Article IV of the agreements. You will note that these charges will be billed and paid on an annual basis. We anticipate beginning service under these contracts in July, 2000.

In my conversations with personnel in the Miscellaneous Taxes Division, questions have been raised as to whether these are taxable charges and if so, are returns to be filed monthly, when for most months no taxes will be returned, or on an annual basis. The CITY would respectfully request a ruling on these issues. Please copy PERSON in the Miscellaneous Taxes Division with any response to this Request.

March 20, 2000

Should you have any questions or require any additional information, I may be contacted as follows:

...

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever. See the enclosed copy of 86 Ill. Adm. Code 495.100.

The contracts you attached to your letter ruling request indicate that the subscriber of the City's services will reimburse the city for operations and maintenance expenses. As stated above in the definition of "gross charge," costs for labor, service or any other expense whatsoever are included in gross charges subject to the Telecommunications Excise Tax. Therefore, the amount of money that the city is reimbursed for operations and maintenance expenses are to be included in gross charges subject to tax.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 10 of the Telecommunications Municipal Infrastructure Maintenance Fee Act defines the term "Gross charges" to mean "the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State or the municipality imposing the fee under this Act, as the context requires, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such

March 20, 2000

telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever."

Reimbursement of operations and maintenance expenses, as set forth in the contracts you attached to your letter ruling request, are fully included in gross charges subject to the Telecommunications Municipal Infrastructure Maintenance Fee.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules, or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.